SUPREME COURT, U. S.

No. 1074

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In the Supreme Court of the United States

OCTOBER TERM, 1967

VETERANS OF THE ABRAHAM LINCOLN BRIGADE, ET AL., PETITIONERS

v.

ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioners ask this Court to exercise its extraordinary power under 28 U.S.C. 1254(1) to issue a writ of certiorari before judgment.

The Veterans of the Abraham Lincoln Brigade was originally designated by the Attorney General as a Communist organization pursuant to Executive Order 9835 and notice of this designation was given by publication in the Federal Register on October 21, 1948 (13 F.R. 6138). Subsequent to this Court's decision in *Joint Anti-Fascist Refugee Committee* v. *McGrath*,

341 U.S. 123, the Veterans of the Abraham Lincoln Brigade was redesignated under Executive Order 10450 (18 F.R. 2489) and regulations thereunder (18 F.R. 2619, 28 C.F.R. 41.1). Notice of this designation was given by publication in the Federal Register on May 12, 1953 (18 F.R. 2741).

From the date of its original designation under Executive Order 9835 until the present date the organization never filed a notice of contest of the original designation or of the continued designation under Executive Order 10450, as required by the regulations. On May 31, 1966, Veterans of the Abraham Lincoln Brigade requested the Attorney General to remove its name and the name of the Abraham Lincoln Brigade [1] from his list of subversive organizations; and on July 6, 1966, the request was denied.

On February 23, 1967, the Veterans of the Abraham Lincoln Brigade and three of its members instituted this action in the United States District Court for the District of Columbia seeking declaratory relief and to enjoin the Attorney General from continuing to list the Veterans as an organization seeking to alter the form of government of the United States by unconsitutional means pursuant to Executive Order 10450. On November 14, 1967, the district court entered its judgment granting the government's motion for summary judgment and dismissing petitioners' complaint. On November 24, 1967, petitioners filed a notice of appeal to the United States Court of

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[1] The "Brigade" is no longer in existence, having expired in 1938 (Pet. p. 4).

Appeals for the District of Columbia Circuit and the case was docketed in that court on January 3, 1968. The petition for a writ of certiorari was filed in this Court on February 2, 1968.

Petitioners have failed to establish that this case "is of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate settlement in this court." Rule 20 of this Court; see *Youngstown Co.* v. *Sawyer*, 343 U.S. 579; *United States* v. *United Mine Workers*, 330 U.S. 258. Indeed, the fact that petitioners allowed eighteen years to pass from the time of the original designation by the Attorney General to the time they instituted this action in the district court is clear evidence that there is no compelling reason why normal appellate procedure should not be followed. The fact that petitioners assert that the designation is unconstitutional is not alone sufficient to warrant the extraordinary exercise of this Court's jurisdiction. Cf. *W.E.B. DuBois Clubs* v. *Clark*, 389 U.S. 309.[2]

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[2] Petitioners apparently sought this extraordinary action because a somewhat similar case was pending before this Court on a petition for a writ of certiorari, *Industrial Workers of the World* v. *Clark*, No. 953, this Term. Since certiorari was denied in the *I.W.W.* case on March 4, 1968, there is clearly no basis for the Court to grant certiorari before judgment in this case.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

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